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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,329	04/25/2000	Randolph A. Stern	STAN-09RE	9722
26875 7590 04/14/2010 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
EXAMINER				
JUSKA, CHERYL ANN				
ART UNIT		PAPER NUMBER		
1786				
MAIL DATE		DELIVERY MODE		
04/14/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/558,329

**Applicant(s)**

STERN ET AL.

**Examiner**

Cheryl Juska

**Art Unit**

1786

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date: \_\_\_\_\_
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed December 17, 2009 has been entered.

### ***Oath/Declaration***

2. The supplemental reissue declaration filed December 17, 2009 has been entered and is sufficient to withdraw the rejection of claims 1-87 as set forth in section 8 of the last Office Action (Non-Final Rejection mailed September 10, 2009).

### ***Reissue Applications***

3. The amendment filed December 17, 2009, proposes amendments to the claims that do not comply with 37 CFR 1.173(b), which sets forth the manner of making amendments in reissue applications. A supplemental paper correctly amending the reissue application is required.
4. Specifically, the status identifiers of "PENDING" are not proper. The only status identifiers required in reissue claim amendments are "once amended," "twice amended," etc. 37 CFR 1.173(c) states "Whenever there is an amendment to the claims pursuant to paragraph (b) of this section, there must also be supplied, *on pages separate from the pages containing the changes*, the status (i.e., pending or canceled), as of the date of the amendment, of all patent claims and of all added claims, and an explanation of the support in the disclosure of the patent for the changes made to the claims." [Emphasis added.] However, said rule does not require the status identifier "pending" in claim amendments.

5. In the event, applicant reinstates an appeal in response to this Office Action, the Claim Appendix should also include all markings pursuant to 37 CFR 1.173.

***Claim Rejections - 35 USC § 102***

6. Since applicant has not formally reinstated an appeal by resubmitting an Appeal Brief with the amendment, the claims stand finally rejected as set forth below. [See last Office Action, section 4(2), which instructs on how to initiate a new appeal after the reopening of prosecution.]

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 65 and 67-69 stand rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,026,129 issued to Sternlieb, as set forth in section 10 of the last Office Action.

9. Claims 30-37 and 51-64 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,181,514 issued to Lefkowitz et al., as set forth in section 11 of the last Office Action.

10. Claims 1, 3-9, 12, 14-20, 30, 32-38, 51, 53-56, 58, 59, 61-66, 68, and 69 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 4,675,226 issued to Ott, as set forth in section 12 of the last Office Action.

11. Claims 30, 32-36, 39, 41, 42, 46-51, 53-56, 65, 68, 69, 80, 83, 84, 86, and 87 stand rejected under 35 U.S.C. 102(b) as being anticipated by US 5,356,402 issued to Gillies et al., as set forth in section 13 of the last Office Action.

***Claim Rejections - 35 USC § 103***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
13. Claims 2, 10, 11, 13, 21, 22, 31, 52, 57, 60, and 67 stand rejected under 35 USC 103(a) as being unpatentable over the cited Ott patent, as set forth in section 15 of the last Office Action.
14. Claims 1, 3-9, 12, 14-20, 23, 26-29, 37, 38, 43, 58, 61-64, 66, 70, 71, 73, 74, 76-79, and 81 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of the cited Ott patent, as set forth in section 16 of the last Office Action.
15. Claims 10, 11, 21, 22, and 57 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of the cited Ott patent, as applied to claims 1, 12, and 51 above, as set forth in section 17 of the last Office Action.
16. Claim 25 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of the cited Ott patent, as applied to claim 23 above, and in further view of the cited Lefkowitz patent and US 4,128,686 issued to Kyle et al., as set forth in section 18 of the last Office Action.
17. Claims 40 and 82 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of EP 261 904 issued to Taylor, as set forth in section 19 of the last Office Action.
18. Claims 24 and 72 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of the cited Ott patent, as applied to claims 23 and 70 above, and in further view of EP 261 904 issued to Taylor, as set forth in section 20 of the last Office Action.

19. Claims 31, 44, 45, 52, 67, and 85 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of the cited Sternlieb patent, as set forth in section 21 of the last Office Action.
20. Claims 2, 13, 59, 60, and 75 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Gillies patent in view of the cited Ott patent, as applied to claims 1, 12, 58, and 70 above, and in further view of the cited Sternlieb patent, as set forth in section 22 of the last Office Action.
21. Claims 1-23, 25-39, 41-71, 73-81, and 83-87 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,128,686 issued to Kyle et al. in view of the cited Gillies, Ott, and/or Sternlieb patents, as set forth in section 23 of the last Office Action.
22. Claims 24, 40, 72, and 82 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Kyle patent in view of the cited Gillies, Ott, and/or Sternlieb patents, as applied to claims 23, 39, 70, and 80 above, and in further view of the cited Taylor patent, as set forth in section 24 of the last Office Action.

### ***Conclusion***

23. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
24. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner can be emailed at [cheryl.juska@uspto.gov](mailto:cheryl.juska@uspto.gov) or the examiner's supervisor, D. Lawrence Tarazano can be reached at 571-272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794

cj  
April 14, 2010